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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CHARLES REED AND ROLAND DUTY
PETITIONERS,
VS.
JAMES TERRELL, SUE RAYBOLD,
BILL LOGUE, JOE JOHNSON, AND
THE STATE BAR OF TEXAS,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether state-court defendants deprived of property without notice pursuant to orders from state judges under the arbitrary state civil statute, V.T.C.A., Family Code Section 11.18(a), which is applied only against men, are precluded from raising these claims in federal court, even when the claims are not barred in state court?

2. Whether federal declaratory relief is precluded when there is a genuine threat of enforcement of the arbitrary state civil statute, V.T.C.A., Family Code Section 11.18(a), which is applied only against men?

3. Whether the State Bar of Texas, a department of the state judiciary, may be enjoined from continuing to instruct

lawyers to unconstitutionally discriminate against men, and may be assessed damages for injuries resulting from application of these instructions?

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II. This Court has repeatedly ruled that 42 U.S.C. Section 1983 applies against state judicial action, and the Fifth Circuit's ruling in this case that state-court defendants deprived of property without

notice pursuant to orders from state judges under the arbitrary state civil statute, V.T.C.A., Section 11.18(a), which is applied only against men, are precluded from raising these claims in federal court, would destroy those precedents in the Fifth Circuit.....26

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OPINIONS BELOW

The opinion of the United States District Court, the Honorable Lucius Bunton presiding, appears in the appendix (Appendix A, pp. A-1 to A-5). The two orders by Judge Bunton denying a rehearing also appear in the appendix (Appendixes B and C, pp. A-6 to A-9).

The opinions of the United States Court of Appeals for the Fifth Circuit finding for Respondents and denying Pe-

titioners' request for rehearing en banc appear in the appendix (Appendixes D and E, pp. A-10 to A-21).

JURISDICTIONAL STATEMENT

On May 6, 1985, the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, entered judgment and filed an opinion (Reed v. Terrell, 759 F. 2d. 472) finding for the Respondents. Petitioners, on May 15, 1985, filed a Petition for Rehearing En Banc, which was denied by the Fifth Circuit Court of Appeals on June 7, 1985.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 and Rules of the Supreme Court, No. 20 (1980).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides as follows:

> No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. Section 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. Section 1343(a) provides as follows:

> The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights including the right to vote.

28 U. S. C. Section 2201 provides that:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under Section 7428 of the Internal Revenue Code of 1954, or a proceeding under Section 505 or 1146 of Title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party

> seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

The disputed state statute, V.T.C.A., Texas Family Code, Section 11.18(a), provides as follows:

> In any proceeding under this subtitle, including, but not limited to, habeas corpus, enforcement, and contempt proceedings, the court may award costs. Reasonable attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order for fees in his own name.

STATEMENT OF THE CASE

The long history of discrimination against husbands and ex-husbands in Texas' family courts, from the district level to the Texas Supreme Court, is reflected in Texas case law and publications of the State Bar of Texas.

V.T.C.A., Family Code Section 11.18(a) was enacted by the Texas Legislature in 1975, and provided for assessment of attorney's fees in divorce, custody, visitation, and support cases, without any fixed standards as to when, or against whom, the law was to be applied. The Statute is completely discretionary, and creates no right to attorney's fees in any case, no matter what facts are proved.

In Texas, attorney's fees are permitted only where provided for by contract or by statute. Statutes providing for attorney fees are "in derogation of the common law",

"punitive in nature", and "must be strictly construed". With the exception of Section 11.18(a), Texas statutes which provide for attorney's fees exist solely for the punishment of intentional torts which are specifically proscribed by law. Section 11.18(a) is incapable of strict construction because it is arbitrary, vague, indefinite, devoid of ascertainable standards, and does not give fair notice as to what facts are to be proved, or what behavior is proscribed.

As predicted by University of Texas Law Professor John Sampson in 1975 (Texas Tech Law Review), Section 11.18(a) has resulted in unconstitutional, defacto discrimination against fathers, husbands, and ex-husbands. At the time Petitioners filed this federal complaint, they had been unable to locate even one instance where Section 11.18(a) had ever been applied

against a woman.

The State Bar of Texas published results of a study entitled A Survey of Discrimination, in the State Bar Section Report, Family Law, Vol. 82-1, Spring 1982, which contained 25 cases where Section 11.18(a) was applied, all of them against men. As of 1984, V.T.C.A. contained 13 cases where Section 11.18(a) was applied, all of them against men. Section 11.18(a) has been applied 6 times against Petitioners, even when they were successful litigants, and has never been applied against their ex-wives, even when they were unsuccessful litigants.

Section 11.18(a) has been used as a financial hurdle to discourage fathers from exercising their constitutional right to defend their parental rights and property in court, and has been used to encourage wives and ex-wives to file frivolous suits

concerning divorce, custody, visitation, and support. The Section has been used by state judges to harass and intimidate fathers, and to punish them for attempting to defend their rights in court.

On July 17, 1978, Petitioner Roland Duty was ordered by Respondent State District Judge Bill Logue to pay $2900 in attorney's fees to Respondent Sue Raybold, under Section 11.18(a), for Raybold's prosecution of an uncontested, agreed, no-fault divorce on behalf of Duty's wife. Having previously entered a detailed property settlement agreement disposing of all issues between Duty and his wife, and on the advice of his attorney, Duty was not even present at the final hearing.

When Duty learned of the judgment issued against him and wanted to appeal, his attorney advised that it would be useless to do so since Judge Logue had the

discretion to issue the order under the law.

Respondent State District Clerk Joe Johnson entered the judgment against Duty, and it was enforced by the McLennan County Sheriff's Department in September 1979.

On November 1, 1979, Petitioner Charles Reed was ordered by Judge Logue to pay Respondent James Terrell attorney's fees of $819.27, under Section 11.18(a), for Respondent Terrell's representation of Reed's ex-wife in a post-divorce visitation and child support trial, even though Reed was a successful litigant. District Clerk Johnson entered the judgment, and it was enforced by the McLennan County Sheriff's Department in February 1980, when the entire proceeds of Reed's bank account were attached, including more than $700 in excess of the amount necessary for the judgment.

On January 29, 1981, Reed was ordered by Judge Logue to pay attorney's fees of $2500.00 to Terrell, under Section 11.18(a), for Terrell's representation of Reed's ex-wife in a post-divorce custody, visitation, and child support trial. State District Clerk Joe Johnson entered the judgment, and the McLennan County Sheriff's Department subsequently made several unsuccessful attempts to enforce it.

Since before April 12, 1978, and on numerous occasions thereafter, the State Bar of Texas has conducted legal education seminars for the purpose of certifying family law "specialists". Materials published for these seminars tell lawyers how to act in concert with judges and other state officials to apply provisions of the Texas Family Code, including Section 11.18(a), so as to deny the equal protection of the laws to fathers, husbands, and

ex-husbands.

The State Bar conducted one such seminar on November 12, 1981, in Dallas. At the seminar, lawyers were instructed to advise their female divorce clients to steal all the money in the family joint checking and savings accounts, use the money to purchase jewelry and other valuables which the judge would likely award to the wife, pay legal fee "deposits" to the lawyer (in excess of his projected fee so the lawyer could conceal these community assets from the court and return the remaining funds to the wife after the divorce), and then ask the court to order the husband to pay the wife's attorney's fee from his future earnings claiming she is unable to pay her attorney.

On March 30, 1982, Judge Logue, at Terrell's request, set a hearing for April 16, 1982, to determine whether Reed and his

present wife, Sharon, should be ordered to deliver the entire proceeds of his government paycheck to the McLennan County Sheriff, for an indefinite period, to be delivered to Terrell, even though Terrell had no judgment whatever against Reed's wife, and even though such an order would have no pretense of legality under Texas law. Terrell knew at the time that Reed's wife had three weeks earlier given birth to a child and could not work to support the family in the event his injunction was granted.

On April 16, 1982, at 10 A.M. Reed and Duty filed a Verified Federal Complaint in the United States District Court for the Western District of Texas at Waco, claiming that V.T.C.A., Family Code Section 11.18(a) is unconstitutional because it contains no ascertainable standards governing its application, and is applied only against men.

Petitioners requested that the Court declare the statute unconstitutional under the 14th Amendment's due process and equal protection clauses, issue a temporary restraining order, and, upon hearing, a preliminary injunction to halt Terrell's illegal and unconstitutional injunctive proceedings against Reed and his wife in state court, issue a permanent injunction against enforcement of the statute, and set a jury trial to assess damages for deprivations of constitutional rights under 42 U.S.C. 1983, 1985, and 1986, including damages against Terrell for the intentional infliction of emotional harm.

On April 16, 1982, at 2:30 p.m., a hearing was held in state court to determine whether a temporary injunction should be issued ordering Reed and his wife to deliver the entire proceeds of his government paycheck to the McLennan County

Sheriff, for delivery to Terrell. At the hearing, Reed raised his federal claims in state court for the first time, claimed that Section 11.18(a) is unconstitutional, furnished the Court a copy of the federal complaint filed earlier that day, and moved that the Court continue the case until the federal court ruled on the constitutionality of Section 11.18(a). The motion was denied, even though the issue was then before the federal court, and the state court no longer had jurisdiction according to state law.

During the state-court hearing on April 16, 1982, at which Reed represented himself, Reed was asked by Terrell whether Reed would obey any order from a Sheriff's deputy to turn over all the money in Reed's possession. Reed refused to speculate on his future behavior. Terrell then had Reed served with an execution by an armed

Sheriff's deputy while Reed sat on the witness stand. When Reed objected to the deputy's presence in the courtroom, the state judge recessed the hearing to allow the deputy to serve the execution. Reed refused to move from the witness stand during the recess. When the hearing resumed, Reed again objected to the deputy's serving an execution in court. The judge then ordered a second recess to allow the execution to be served, thereby denying Reed sanctuary to appear in court and defend his property without intimidation and harassment. When ordered to surrender all the money in his possession, Reed, fearful that he might be illegally imprisoned, complied with the order, and surrendered $9.15. Terrell's request for a temporary injunction was denied.

Reed's request for a temporary restraining order from the federal court was

denied on April 26, 1982, by United States District Judge James Nowlin. Reed's second request for a temporary restraining order was denied on May 4, 1982, by Judge Nowlin.

On May 12, 1982, trial on the merits was held in Terrell's state-court suit for an injunction against Reed and his wife, Sharon. Terrell's request for a permanent injunction was denied without comment concerning Reed's federal claims. The judgment against Reed for $2500.00 has never been enforced.

On May 14, 1982, Duty was tried for contempt of court in a suit brought by Duty's ex-wife, who was represented by the Texas Department of Human Resources. The suit was filed on April 13, 1982, by state's attorney Don Raybold, husband of Respondent Sue Raybold. The Court found that Duty was not in contempt, but nevertheless ordered him to pay attorney fees of

$200, and court costs of $74, to the Texas Department of Human Resources, despite Duty's notice to the court that the constitutionality of Section 11.18(a) was then before the federal court. In the same order, Duty was also ordered to pay the state $500 in attorney fees in the event he appealed the decision. The State was awarded attorney's fees at the rate of $40 per hour, even though their attorney, Raybold, was paid at the rate of $12 per hour.

Duty appealed the decision assessing attorney fees against him on the ground that he was a successful litigant. The Tenth Court of Civil Appeals in Waco affirmed the decision in 1983. Duty attempted to appeal to the Texas Supreme Court, but the Supreme Court refused to hear the case.

In June 1983, Duty filed a second fed-

eral complaint, requesting an injunction to prevent his imprisonment, or the seizure of his property to enforce the judgment for $700 in legal fees to the state for his trial and appeal. He then requested, and was granted, a dismissal of the second federal case, without prejudice, with permission to combine the second federal case with this federal case in the form of a supplement.

On October 24, 1983, upon only two hours notice to Petitioners, which is insufficient notice to afford due process for pro se litigants, a hearing was held on Respondents' motions to dismiss on the pleadings. Motions to dismiss were granted for all Respondents, and announced in court by United States District Judge Lucius Bunton.

A motion for rehearing was denied by Judge Bunton on November 4, 1983. A second

motion for rehearing was denied by Judge Bunton on November 28, 1983.

On December 29, 1983, pursuant to the Federal Rules of Appellate Procedure, Petitioners filed a timely notice of appeal with the Clerk of the District Court.

Duty was cited to appear in State District Court on July 5, 1984, to show cause as to why he should not be imprisoned for failure to pay the $700 judgment for attorney's fees to the State of Texas. Duty again called the Court's attention to the fact that the constitutionality of Section 11.18(a) was before the federal courts. Duty was found in contempt for failure to pay the $700 in attorney fees at issue in the federal case, which was still pending at the time. In addition, he was ordered to pay $400 in attorney fees for the hearing just completed, or to be imprisoned immediately, without even the opportunity

to appeal. Duty was not imprisoned because he paid, to avoid illegal imprisonment, $1200 in attorney fees and $74 in court costs. Despite the fact the court's decision was obviously illegal and unconstitutional on its face, for a number of reasons, Duty realized any appeal would again prove futile, and no appeal was taken.

On December 28, 1984, Reed had legal custody of his child, Michael, taken from him without notice, without hearing, and without even the filing of a motion as required by state law. Terrell prepared the order for this illegal change of custody, and it was signed and entered by State District Judge Ray Mormino. Reed twice petitioned the Texas Supreme Court for a writ of Mandamus to have the illegal and unconstitutional custody order set aside. Even though the order had no pretense of legal-

ity or constitutionality, the Texas Supreme Court twice denied the writ.

Subsequent to Petitioner's Notice of Appeal on December 29, 1983, all records, briefs, and oral arguments were presented to a panel of the United States Court of Appeals for the Fifth Circuit.

Oral arguments before the Fifth Circuit were set for March 7, 1985, at 9:00 a.m. in New Orleans, and announced approximately a month before that date. Terrell filed a frivolous motion against Reed in state-court and set the hearing for 2 p.m., March 6, 1985. This would have left Reed less than 18 hours to travel the 500 mile distance to New Orleans, Louisiana, for oral arguments before the Fifth Circuit. Terrell's scheme to use the state court to interfere with Reed's ability to prosecute this federal suit failed because Reed left Waco, Texas a week before March

7, and was never served notice of the state-court hearing.

The Fifth Circuit affirmed the judgment of the District Court in an opinion rendered on May 6, 1985, (Reed v. Terrell, 759 F. 2d. 472).

On May 15, 1985, pursuant to the Federal Rules of Appellate Procedure and Local Rules of the United States Court of Appeals for the Fifth Circuit, Petitioners requested a rehearing en banc by the entire Fifth Circuit Court of Appeals. The rehearing was denied on June 7, 1985.

Petitioners then petitioned this Court for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

I. THIS COURT HAS RULED THAT STATE-COURT JUDGMENTS HAVE THE SAME PRECLUSIVE EFFECT IN FEDERAL COURT AS IN STATE COURT, AND

THE FIFTH CIRCUIT'S RULING IN THIS CASE THAT STATE-COURT DEFENDANTS DEPRIVED OF PROPERTY WITHOUT NOTICE PURSUANT TO ORDERS FROM STATE JUDGES UNDER THE ARBITRARY STATE CIVIL STATUTE, V.T.C.A., FAMILY CODE SECTION 11.18(a), ARE PRECLUDED FROM RAISING THESE CLAIMS IN FEDERAL COURT, EVEN THOUGH THE CLAIMS ARE NOT BARRED IN STATE COURT, WOULD DESTROY THAT PRECEDENT IN THE FIFTH CIRCUIT.

This Court ruled in Migra v. Warren City School District Board of Education, 104 S. Ct. 892, that state court judgments have the same preclusive effect in 42 U.S.C. Section 1983 suits as in state court. Yet, in the instant case, the Fifth Circuit completely disregarded the law of the state of Texas in applying collateral estoppel where it would not apply under state law.

In Texas, "the failure of a court to observe a mandatory constitutional provision. . . forbidding a particular action will render its judgment absolutely void.

(emphasis added) 34 Tex Jur 2d, Judgments, Section 313, p. 279.

On the subject of collateral estoppel, 34 Tex Jur 2d, Judgments, Section 260, p. 169, states:

> "The doctrine that a judgment may not be impeached in a collateral proceeding applies only to judgments that are not void, for if a judgment is in fact a nullity, there is no reason why it should not be declared so whenever the occasion arises. (emphasis added) Although a void judgment may be attacked directly, as well as collaterally, there is no necessity for doing so; it need not be vacated or set aside; it may simply be ignored. And when some right is asserted under the judgment, its invaldity may be pointed out by anyone in any kind of proceeding, in any court, and at any time. (emphasis added) In other words, it may be attacked collaterally."

In the present case, the sole authority for the unconstitutional judgments complained of is the unconstitutional statute, V.T.C.A., Family Code Section 11.18(a), which is repugnent to both the due process and equal protection clauses of the 14th

If Section 11.18(a) is unconstitutional, either on its face or as applied, as Petitioners claim it is, then any judgment issued under it is "absolutely void" under Texas law, and may be attacked collaterally in federal court. Thus, there is no valid foundation for the Fifth Circuit's application of a rule of collateral estoppel which does not exist in Texas. If this error by the Fifth Circuit is not corrected, it will undermine the intent and effect of 42 U.S.C. Section 1983, and destroy this Court's precedent in Migra, supra, in the Fifth Circuit.

II. THIS COURT HAS REPEATEDLY RULED THAT 42 U.S.C. SECTION 1983 APPLIES AGAINST STATE JUDICIAL ACTION, AND THE FIFTH CIRCUIT'S RULING IN THIS CASE THAT STATE-COURT DEFENDANTS DEPRIVED OF PROPERTY WITHOUT NOTICE PURSUANT TO ORDERS FROM

STATE JUDGES UNDER THE ARBITRARY STATE CIVIL STATUTE, V.T.C.A., FAMILY CODE SECTION 11.18(a), WHICH IS APPLIED ONLY AGAINST MEN, ARE PRECLUDED FROM RAISING THESE CLAIMS IN FEDERAL COURT, WOULD DESTROY THOSE PRECEDENTS IN THE FIFTH CIRCUIT.

Notwithstanding the misapplication of collateral estoppel in this case, the Fifth Circuit ignored a long line of precedents by this Court beginning with Mitchum v. Foster, 407 U.S. 225, 92 S.Ct. 2151, holding that 42 U.S.C. Section 1983 applies against state judicial action. The Fifth Circuit's decision in this case would establish in the Texas state courts a protected haven for the violation of constitutional rights beyond the reach of the federal courts, in direct contradiction to this Court's holding in Mitchum v. Foster, supra.

It is a gross denial of the due process right to a fair tribunal to require a

civil rights litigant to submit his federal claims to be determined by the very persons who perpetrated the constitutional deprivations in the first place. Yet, that is exactly what the Fifth Circuit ruled in this case, when it held that Petitioners should have submitted their constitutional claims, that state judges at every level were discriminating against them as a class, to be determined by those same state judges. Even a jury trial, under such circumstances would be wholly inadequate for purposes of due process.

This Court held in Mitchum v. Foster, supra., 407 U.S. at p. 240-241, 92 S. Ct. at p. 2161, that:

> It is clear from the legislative debates surrounding passage of Section 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment "against state action, whether that action be executive, legislative, or judicial. Ex Parte Virginia, 100 US 339, 346,(emphasis added by Court). Pro-

> ponents of the legislation noted that the state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon the abrogation of federally protected rights."

It is obvious in this case, and Petitioners have alleged, that the state courts are being used to harass Petitioners, because the state courts are in league with persons bent upon abrogation of federally protected rights. In Haring v. Prosise, 103 S.Ct. 2368, this Court recently reiterated the rule in Mitchum stating:

> "Adoption of petitioners'rule of preclusion would threaten important interests in preserving federal courts as an available forum for the vindication of constitutional rights."...
> "Defendants who have pleaded guilty and who wish to bring a Section 1983 claim would be forced to bring that claim in state court, if at all. Not only have petitioners failed to advance any compelling justification for a rule confining the litigation of constitutional claims to a state forum, but such a rule would be wholly contrary to one of the central concerns which motivated the enact-

> ment of Section 1983, namely, the 'grave congressional concern that the state courts had been deficient in protecting federal rights.' "

This Court ruled in Lugar v. Edmondson Oil, 102 S.Ct. 2744, that a state courts' deprivation of property without due process under an unconstitutional state law was actionable under Section 1983.

Petitioners have repeatedly been denied their most basic due process rights by state courts, have been repeatedly discriminated against by state courts because they are members of a despised minority class, divorced fathers, and have suffered these deprivations of constitutional rights along with thousands of other divorced fathers in Texas. Both Petitioners have sought relief in the Texas Courts of Appeal and the Texas Supreme Court, with no success.

Other Texas fathers have also been denied relief to which they were entitled, at every level by Texas' state courts. In Ridgway v. Baker, 720 F.2d. 1408, the Fifth Circuit found that Ridgway had been imprisoned for life in the Potter County Jail, without even the right to a lawyer, because he was so destitute he could not afford a lawyer, and his imprisonment had been sanctioned by the Texas Supreme Court.

Also, in Haring v. Prosise, supra., at page 2372, this Court stated:

> "(A)mong the most critical guarantees of fairness in applying collateral estoppel is the guarantee that the party to be estopped had not only a full and fair opportunity but an adequate incentive to litigate 'to the hilt' the issues in question."

It is clear that Petitioners have never had a "full and fair opportunity" in state court to "litigate to the hilt" the

issues raised against them there. Thus, the Fifth Circuit's decision in this case would provide an avenue for the states to circumvent the Fourteenth Amendment, without any risks whatever to the individuals who conspire to deny constitutional rights. This Court cannot allow such a decision to go uncorrected without seriously undermining the intent and effect of Section 1983, and destroying the precedents going back to Mitchum, supra.

III. THIS COURT HAS REPEATEDLY RULED THAT FEDERAL DECLARATORY RELIEF IS APPROPRIATE WHEN THERE IS A GENUINE THREAT OF ENFORCEMENT OF AN UNCONSTITUTIONAL STATE LAW, EVEN WHEN NO STATE LITIGATION IS PENDING, AND THE FIFTH CIRCUIT'S RULING IN THIS CASE THAT FEDERAL DECLARATORY RELEIF IS PRECLUDED WHEN THERE IS A GENUINE THREAT OF ENFORCEMENT OF THE ARBITRARY STATE CIVIL STATUTE, V.T.C.A., FAMILY CODE SECTION

11.18(a), EVEN WHEN STATE LITIGATION IS PENDING, WOULD DESTROY THOSE PRECEDENTS IN THE FIFTH CIRCUIT.

In this case, the Fifth Circuit panel ruled that the United States District Court lacked jurisdiction to declare Section 11.18(a) unconstitutional, even though the Petitioners attacked the constitutionality of the statute both on its face and as applied, invoked 28 U.S.C. Section 2201, and prayed that the statute be declared unconstitutional. Thus, the Panel's decision directly conflicts with a long line of precedents by this Court beginning with Steffel v. Thompson, 415 US 452, 474-475, 94 S. Ct. 1209, 1223-1224, wherein this Court stated:

> "Regardless of whether injunctive relief may be appropriate, federal declaratory relief is not precluded when no state prosecution is pending and a federal plaintiff demonstrates

> a genuine threat of enforcement of a disputed state criminal statute, whether an attack is made on the constitutionality of the statute on its face or as applied."

As alleged in Petitioner's complaint, Section 11.18(a) is applied in a discriminatory manner against men, and such an arbitrary classification serves no important governmental purpose. This Court ruled in Orr v. Orr, 440 U.S. 368, 99 S.Ct. 1102, that class-based discrimination which is not related to any important governmental objective is unconstitutional. In Yick Wo v. Hopkins, 118 U.S. 356, this Court ruled that a law, fair on its face, is unconstitutional when it is applied "with an evil eye and an unequal hand", as Section 11.18(a) is applied.

Neither the United States District

Court nor the Fifth Circuit has advanced any reason why collateral estoppel, even if applicable, has anything to do with Petitioners claims for prospective relief, including injunctive relief. The Fifth Circuit disregarded its own precedent in Gresham Park Community Organization v. Howell, 652 F 2d 1227, at 1236, wherein it stated:

> Where a party asks a federal court to declare a state court judgment null and void, we should consider this as praying for an injunction enjoining its enforcement.

The wording of the Fifth Circuit's opinion implies that Petitioners, by requesting more relief than they were entitled to, thereby forefeited the prospective relief requested to which they were otherwise entitled to. Such is unprecedented.

The Fifth Circuit's denial of prospec-

tive relief goes against a long line of precedents beginning with Steffel v.Thompson, supra. This Court recently reiterated those precedents in Pulliam v. Allen, 104 S.Ct.1970 (1984). While this federal case was pending, the unconstitutiional Section 11.18(a) was applied an additional three times against Duty, despite the lack of state court jurisdiction at those times.

Thus, it is clear, not only that there existed a genuine threat of enforcement of an unconstitutional state statute, the statute was enforced against Duty several times while the issue of its constitutionality was before the federal courts. There is no legal principle whatsoever to support the Fifth Circuit's denial of prospective declaratory relief, and their decision in this case would destroy the long line of Supreme Court precedents going back

to Steffel, supra, in the Fifth Circuit.

IV. THE FIFTH CIRCUIT DECIDED IN THIS CASE THAT THE CONDUCT OF THE STATE BAR OF TEXAS IN PUBLISHING MATERIALS AND CONDUCTING SEMINARS TELLING LAWYERS TO UNCONSTITUTIONALLY DISCRIMINATE AGAINST MEN IS NOT ACTIONABLE UNDER 42 U.S.C. SECTION 1983 AND 1985, AND THIS IMPORTANT FEDERAL QUESTION SHOULD BE DECIDED BY THIS COURT.

The Fifth Circuit ruled that Petitioner's claim that the State Bar of Texas had published materials and conducted seminars instructing lawyers in the practice of sexual discrimination, even if proved, was "without merit", citing no authority, thus concluding that Sections 1983 and 1985 afford no remedy for the planning of such intentional deprivations of constitutional rights.

This Court ruled in Palmore v. Sodoti, 104 S.Ct. 1879, that even where prejudice exists in society, the state cannot give effect, either directly or indirectly, to

such prejudice.

In Article 320 a-1, Vernon's Texas Codes Annotated, the State of Texas grants permission to sue the State Bar in its own name. Where the State Bar, a state agency, draws blueprints for constitutional deprivations, there is no reason why Sections 1983 and 1985 cannot be applied against the State Bar. To rule otherwise undermines the intent and effect of these Sections intended to provide a remedy for just such constitutional deprivations.

CONCLUSION

Based on the foregoing arguments and authorities, the petitioners pray that their Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit be granted.

Respectfully submitted,

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Roland Duty, pro se
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CERTIFICATE OF SERVICE

It is hereby certified that service of this petition has been made on counsel for all respondents by mailing copies thereof on this 30th day of August, 1985, in envelopes, with postage prepaid, properly addressed to them as follows:

LaNelle McNamara
500 RepublicBank Tower
Waco, Texas 76701

Larry O. Brady
P. O. Box 1470
Waco, Texas 76703

Jerry Benedict
P. O. Box 12548
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Austin, Texas 78711-2548

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Waco, Texas 76701-2195

Steven Smoot
P. O. Box 12487
Austin, Texas 78711

Charles Reed

Charles Reed, pro se

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

NO. W-82-CA-75

CHARLES REED AND
ROLAND DUTY,

Plaintiffs

VS.

JAMES TERRELL, SUE RAYBOLD,
BILL LOGUE, JOE JOHNSON AND
THE STATE BAR OF TEXAS,

Defendants

ORDER OF DISMISSAL

On this day came on to be considered the motions of Defendants, James Terrell, Sue Raybold, Bill Logue, Joe Johnson, and the State Bar of Texas, to dismiss Plaintiffs' suit against them; and the Court, having considered such motions and the arguments and authorities thereon, is of

the opinion that such motions are meritorious and should in all things be granted.

Plaintiffs herein are complaining of judgments entered against them in proceedings in the 19th District Court of McLennan County, Texas. The judgments awarded attorneys' fees to Defendants Terrell and Raybold, who were private attorneys representing the adversaries of Plaintiffs in the proceedings in State District Court. The judgments complained of were entered by Defendant Bill Logue, Judge of the 19th District Court of McLennan County, Texas, and were recorded by Defendant Joe Johnson, District Clerk of that court. The State Bar of Texas was joined as a defendant in this case based on allegations that the organization conducted seminars and published materials which instructed lawyers and

judges to enter judgments like those complained of by Plaintiffs.

Plaintiffs' complaints are framed as civil rights actions attacking the constitutionality of the judgments entered against them in the State District Court and the constitutionality of the Texas statute which authorizes awards of attorneys' fees in domestic relations cases brought in Texas courts. Although the complaint is cast as an action seeking redress for civil rights violations, the essential relief sought is review and reversal of the state court's judgments against Plaintiffs. Plaintiffs were entitled to attack the constitutionality of the judgments and the statute authorizing the judgments through appeals in the Texas courts and through appeal or petition for writ of certiorari in the Supreme Court of the United States.

Plaintiffs did not appeal from the judgments entered against them. Thus, the Texas state courts were not afforded an opportunity to review the judgments or the statute that are attacked in this action. This Court does not have, nor should it take, jurisdiction of actions which seek to review judgments that should have been attacked directly in a state court.

Furthermore, Plaintiffs have failed to state a Federal cause of action for which relief can be granted. In addition, all claims asserted against Defendant Raybold alone or in concert with the other Defendants are barred by the statute of limitations.

For the reasons stated above, and for other reasons cited in Defendants' Motions to Dismiss and their Briefs in support of the same, Plaintiffs' suit

should be dismissed.

It is therefore ORDERED, ADJUDGED and DECREED that the motions of Defendants, James Terrell, Sue Raybold, Bill Logue, Joe Johnson and the State Bar of Texas, to dismiss Plaintiffs' suit against them are hereby in all things granted, and Plaintiffs' suit as against said Defendants is hereby in all things dismissed at Plaintiffs' cost.

SIGNED AND ENTERED this 8th day of November, 1983.

/s/ Lucius D. Bunton

UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

NO. W-82-CA-75

CHARLES REED, et al.

VS.

JAMES TERRELL, et al.

ORDER

Came on this day for consideration Plaintiffs' Motion for Rehearing and Relief from Judgment, following the Court's granting all Defendants' Motions to Dismiss. The Court is of the opinion that its Order of dismissal was, and continues to be appropriate; accordingly,

IT IS ORDERED that Plaintiffs' Motion for Rehearing and Relief from Judgment be and is hereby DENIED.

SIGNED and ENTERED this 4th day of November, 1983.

/s/ Lucius D. Bunton

UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

NO. W-82-CA-75

CHARLES REED, et al.

VS.

TERRELL, et al.

ORDER

Came on this day for consideration Plaintiffs' Second Motion for Rehearing and/or Amendment of Judgment. The Court continues to be of the opinion that its ruling as originally entered is correct; accordingly,

IT IS ORDERED that Plaintiffs' Second Motion for Rehearing and/or Amendment of Judgment be and is hereby DENIED.

SIGNED and ENTERED this 28th day of November, 1983.

/s/ Lucius D. Bunton

UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 84-1010

D. C. Docket No. W-82-CA-75

CHARLES REED and ROLAND DUTY,

Plaintiffs-Appellants,

versus

JAMES TERRELL, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Texas

Before RANDALL, JOHNSON, and GARWOOD, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by appellants and counsel;

ON CONSIDERATION WHEREOF, It is now

here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed;

IT IS FURTHER ORDERED that plaintiffs-appellants pay to defendants-appellees the costs on appeal, to be taxed by the Clerk of this Court.

May 1, 1985

ISSUED AS MANDATE: JUN 17 1985

A true copy 6/17/85

Test: GILBERT F. GANUCHEAU

Clerk, U. S. Court of Appeals, Fifth Circuit OP-JDT-11

By /s/ A. S. Rondeno

Deputy

New Orleans, Louisiana

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

CHARLES REED and ROLAND DUTY,

Plaintiffs-Appellants,

v.

JAMES TERRELL, ET AL.,

Defendants-Appellees

No. 84-1010

May 6, 1985.

Appeal from the United States District Court for the Western District of Texas.

Before RANDALL, JOHNSON, and GARWOOD, Circuit Judges.

JOHNSON, Circuit Judge:

Plaintiffs-Appellants Charles Reed and Roland Duty filed this suit under various statutory provisions, including 42 U.S.C. Sections 1983, 1985, and 1986. Reed and Duty claim that their constitutional rights of due process and equal protection were violated by the award of

attorney's fees to defendants Terrell and Raybold, who were the attorneys representing the ex-wives of Reed and Duty in state court divorce and custody proceedings. Reed and Duty base this claim on their assertion that section 11.18(a) of the Texas Family Code, although neutral on its face,[1] is discriminatorily applied by Texas state courts against men. In addition to the two attorneys, the plaintiffs named as defendants the Honorable Bill Logue, Judge of the 19th State District Court (the state district judge who entered the orders complained of); Joe Johnson, District Clerk for McLennan County (the district clerk who filed the

1. That section provides:

> In any proceeding under this subtitle, including, but not limited to, habeas corpus, enforcement, and contempt proceedings, the court may award costs. Reasonable attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney,

orders); and the State Bar of Texas.[2] Plaintiffs sought declaratory relief, injunctive relief, and damages. Plaintiffs particularly sought reversal of the state court awards of attorney's fees against them.

Defendants moved to dismiss. On October 24, 1983, the federal district court granted the defendants' motion to dismiss following a hearing. In granting the defendants' motion to dismiss, the district court noted:

> Plaintiffs' complaints are framed as civil rights actions attacking the constitutionality of the judgments entered against them in the State Dis-

who may enforce the order for fees in his own name.

Tex.Fam.Code Ann. Section 11.18(a) (Vernon Supp. 1984).

2. Plaintiffs alleged that materials published by the State Bar indicated a conspiracy by members of the State Bar to cause the provisions of the Texas

trict Court and the constitutionality of the Texas statute which authorizes awards of attorneys' fees in domestic relations cases brought in Texas courts. Although the complaint is cast as an action seeking redress for civil rights violations, the essential relief sought is review and reversal of the state court's judgments against Plaintiffs. Plaintiffs were entitled to attack the constitutionality of the judgments and the statute authorizing the judgments through appeals in the Texas courts and through appeal or petition for writ of certiorari in the Supreme Court of the United States.

Family Code concerning legal fees to be enforced in a discriminatory manner against men. Plaintiffs allege that such action constitutes a violation of the Sherman Act in that it overcharges one group of consumers to the benefit of another. There is no merit to this allegation.

> Plaintiffs did not appeal from the judgments entered against them .... This Court does not have, nor should it take, jurisdiction of actions which seek to review judgments that should have been attacked directly in a state court.

In dismissing the plaintiffs' actions, the district court did not err. It is a well-settled principle that a plaintiff may not seek a reversal in federal court of a state court judgment simply by casting his complaint in the form of a civil rights action. Hagerty v. Succession of Clement, 749 F.2d 217, 220 (5th Cir.1984) (no jurisdiction to review state court judgment where appeal taken through state court system); Sawyer v. Overton, 595 F.2d 252 (5th Cir.1979). Moreover, the Supreme Court has stated that a "United States District Court has no authority to

review final judgments of a state court in judicial proceedings." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S.Ct. 1303, 1315, 75 L.Ed.2d 206 (1983).[3] While a losing party in state court proceedings may be able in some instances to sue in federal court to "mount() a general challenge to the constitutionality" of a statute or rule, Feldman, 460 U.S. at 483, 103 S.Ct. at 1316, no such situation is presented in the instant case. As the federal district court in the instant case noted, the "essential relief" sought by the plaintiffs is reversal of the state court award of attorney's fees against them.

3. Moreover, the Supreme Court has noted that "a petitioner's failure to raise his constitutional claims in state court does not mean that a United States District Court should have jurisdiction over the claims." Feldman, 460 U.S. at 482, n. 16, 103 S.Ct. at 1315 n. 16. Indeed, such failure may lead the party to "forfeit

District Court op. at 1. Indeed, this Court's review of the record in the instant case reveals that the plaintiffs' suit is "patently an attempt to collaterally attack the validity of (the state court judgment)." Almon v. Sandlin, 603 F.2d 503, 506 (5th Cir.1979). See also Kimball v. Florida Bar, 632 F.2d 1283, 1284 & n. 3 (5th Cir.1980) (federal complaint, in essence, sought reversal of state court judgment although cast in form of general constitutional attack). A review of the plaintiffs' pleadings and arguments in the instant case reveals that this suit is "inextricably intertwined" with the state court's awards against the plaintiffs. Feldman, 460 U.S. at 483, n. 16, 103 S.Ct. at 1315, n.

his right to obtain reviewof the state court decision in any federal court." Id.

16. Thus, the district court did not err in dismissing the instant suit for want of jurisdiction.

Accordingly, the judgment of the district court is

AFFIRMED.

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 84-1010

CHARLES REED and ROLAND DUTY,

Plaintiffs-Appellants

versus

JAMES TERRELL, ET AL.,

Defendants-Appellees.

Appeal from the United States

District Court for the

Western District of Louisiana (sic)

ON SUGGESTION FOR REHEARING EN BANC

(Opinion May 6, 5 Cir., 1985, ___F.2d___)

(June 7, 1985)

Before RANDALL, JOHNSON and GARWOOD,

Circuit Judges.

PER CURIAM:

Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be pclled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Sam Johnson

United States Circuit Judge

6-3-85

U.S. COURT OF APPEALS

FILED

JUN 7 1985

GILBERT F. GANUCHEAU

CLERK